



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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Appl. No. : 10/616,028 Confirmation No. 1533
Applicant : Mark E. Addis
Filed : July 9, 2003
TC/A.U. : 3673
Examiner : Alison K. Pickard

Docket No. : 085.10778-US(04-533)
Customer No. : 52237

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

REPLY BRIEF

Sir:

This is in response to the Examiner's Answer mailed on January 16,
2007.

Remarks/Arguments begin on page 2 of this paper.

REMARKS/ARGUMENTS

As noted by the Examiner on page 4, lines 7 - 8, of the Examiner's Answer, Appellants have argued that Flower does not disclose all of the subject matter in claim 1 on appeal. The Examiner disagrees and argues that Flower's disclosure "as a whole" sets forth every limitation required by the claim. Recognizing that FIGS. 1 and 6 do not disclose the claimed invention, the Examiner argues "the disclosure is not limited to only those figures, i.e. there may not be a figure for every possible embodiment. Those figures are examples of possible configurations disclosed by Flower." Appellants submit that this argument finds no support in the existing case law. In fact, the Examiner has not cited a single case in support of the foregoing propositions. Flower is very clear about what is disclosed and there simply is no disclosure of the subject matter set forth in claim 1.

With respect to FIG. 6, the Examiner contends that this Figure meets the limitations of claim 1. The Examiner states that Flower discloses that a spacer ring "may" be disposed between the bristle sets and points to column 3, lines 31 - 33. Looking at this section of Flower, one finds that the Examiner has misread what it is that Flower teaches and misstated the cited portion. First, column 3, lines 31 - 33 is not specific to FIG. 6. It says "[f]or certain applications of the seal assembly of this invention, a relatively thin spacer ring may be disposed between the rows of bristles at the root end thereof" Flower discloses such an application in FIG. 6. In FIG. 1, Flower discloses an application where a spacer ring is not used. To say that the spacer ring in FIG. 6 is optional is to distort what it is that Flower says in the cited portion. Second, it should be noted that the Examiner states that she "considers" the spacer ring to be optional or an alternative. Appellant submits that what the Examiner "considers" is not

germane to the rejection. An anticipation rejection must be based on what it is that the prior art teaches to one of ordinary skill in the art.

The Examiner at the bottom of page 4 goes on to argue that the claim limitations are met even if the spacer ring is present. The Examiner states that Flower discloses that the bristles will spread such that the spacer is lost and points to column 5, lines 15 - 21 of the Flower specification. The Examiner then states that "the spacer could be considered part of the 'joint' between the plates." The Examiner contends that the claim does not require the bristles to abut immediately adjacent to the weld that holds the plates together.

There are a number of deficiencies in this argument. First, once again the Examiner misreads and misstates what it is that Flower says because she quotes only part of the sentence. The complete sentence says "[d]espite the provision of this ring 25, the bristles of the two rows thereof will be in close contact at least in the region of the tips 18 of the bristles 17 (emphasis added), as the bristles tend to spread to some extent, so that the space created by the spacer ring 25 will be lost in the region of the bore of the backing plate 15 (emphasis added). In other words, Flower never says that the two rows of bristles will abut each other at a point adjacent a joint between the back plate and the side plate and substantially along the length of the bristles. In fact, Flower is clear that the spacer ring does indeed space the two rows of bristle at the root end 22 of the bristles which is adjacent to the joint. Second, it should also be noted that the cited statement is made with respect to the embodiment of FIG. 3 and not the embodiment of FIG. 6.

Third, with respect to the contention that the spacer ring should be considered to be part of the joint, Appellant points out that the spacer ring

serves no function with respect to joining the two plates together and therefore should not be considered to be part of the joint.

Finally, the Examiner's contention that the claim does not require the bristles to abut immediately adjacent to the weld that holds the plates together is simply wrong. The claim is clear that the first and second set of bristles abut at a point adjacent a joint between the back plate and the side plate and substantially along the length. There is no qualifier such as "substantially" or "approximately" in the claim. Thus, the only reasonable construction of claim 1 is that the claim requires the bristles to abut immediately adjacent to the weld.

On page 5 of the Examiner's Answer, the Examiner argues that claim 3 clearly anticipates Appellant's claim 1. Claim 3 depends from claim 1 in Flowers. Appellant can not find any mention in claim 1 or claim 3 that the "second set of bristles have a length and abut the first set of bristles at a point adjacent a joint between said back plate and said side plate and substantially along said length". In fact, neither claim 1 nor claim 3 discusses a joint between the back plate and the side plate. It is submitted that claim 3 in Flower does not anticipate the subject matter of claim 1 on appeal. To even suggest that it does defies logic.

As can be seen from the foregoing discussion, there is no disclosure in Flowers of the subject matter of claim 1. The machinations of the Examiner in maneuvering between unrelated parts of the Flower disclosure and incompletely reading statements in Flower evidences the lack of the claimed subject matter. It is also clear that the Examiner is attempting to establish anticipation by interpreting the reference. Appellant submits that the Examiner can not establish anticipation by interpreting or construing the reference to fill in missing material.

For these reasons and the reasons set forth in Appellant's brief, claim 1 is not anticipated by Flowers.

In Section B beginning in the middle of page 5 of the Examiner's Answer, FIGS. 4 and 5 in Flower most certainly do not anticipate the subject matter of claims 5 and 6. Claims 5 and 6 include the subject matter of claim 1 in combination with the subject matter of claims 5 and 6. For the reasons set forth in Appellant's brief, FIGS. 4 and 5 do not contain each of the elements set forth in the combination of claims 5 and 6. It is clear from column 4, lines 12 - 15 of the Flower patent that FIGS. 4 and 5 relate to the embodiment shown in FIG. 3.

It should also be noted that the Examiner is construing the reference when she argues "[t]hus, bristle sets with the same angles can be considered 'non-interfering lay angles' in that the angle of the bristles do not interfere with the function of the seal." Appellant submits that this is inappropriate.

With respect to the argument about claim 6, the Examiner presents an argument based on the angles being the same. However, column 5, lines 25 - 26 of Flower, on which the Examiner has relied, clearly says that in this embodiment the angle of the bristles 17 is different from the angle of bristles 17. Thus, if the Examiner is relying on this portion as the basis for the anticipation, it follows that the angles can never be zero. There simply is no disclosure of the claimed range in Flower.

With respect to the last paragraph on page 5 of the Examiner's Answer, the Examiner misreads Appellant's argument about claim 8 which clearly states that there is no embodiment in Flower where the second set of bristles extends to at least to the back plate in combination with the other features described in claim 1.

With respect to the Examiner's argument at the top of page 6 of the Examiner's Answer, there is no disclosure in Flower of an embodiment where the longer set of bristles 19 abuts the back plate that meets all the other limitations incorporated into claim 28 by virtue of its dependency.

With respect to section II on page 6 of the Examiner's Answer, Appellant's argument is still valid with respect to the patentability of claim 10. Millener does not overcome the deficiencies of Flower noted in Appellant's Brief and the instant Reply Brief.

CONCLUSION

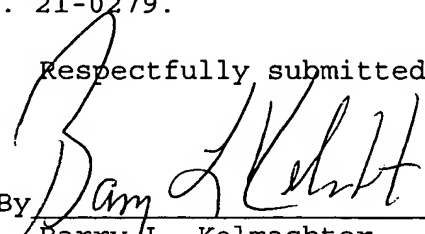
For the reasons set forth in Appellant's Brief and the instant Reply Brief, the rejections of record should be reversed and the application should be remanded to the Primary Examiner for allowance and issuance.

FEES

No fee is believed to be due as a result of this response. Should the Director determine that a fee is due, he is hereby authorized to charge said fee to Deposit Account No. 21-0279.

Respectfully submitted,

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I, Karen M. Gill, hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on March 14, 2007.

